

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SUZETTE BLAND,

Defendant.

Case No. CR05-5785 RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Defendant's Motion for Release Pending Appeal<sup>1</sup> [Dkt. #83].

Having considered the entirety of the records and file herein, the Court finds and rules as follows:

Ms. Bland was convicted after a jury trial of two counts of Social Security Fraud. On January 19, 2007 she was sentenced to ten months in custody, three years of supervised release and ordered to pay \$45,203.50 in restitution. She timely appealed the judgment and sentence and now seeks release pending appeal.

Release pending appeal is governed by 18 U.S.C. §3143(b). The defendant bears the burden of proving:

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

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<sup>1</sup>On February 8, 2007 defendant filed an Amended Motion for Release [Dkt. #87]. The amended motion does not differ from the original motion in any material way.

1 (B) that the appeal is not for the purpose of delay and raises a substantial  
2 question of law or fact likely to result in –

- 3 (i) reversal,  
4 (ii) an order for a new trial,  
5 (iii) a sentence that does not include a term of imprisonment, or  
6 (iv) a reduced sentence to a term of imprisonment less than the total  
7 of the time already served plus the expected duration of the appeal  
8 process.

9 Defendant makes two arguments in support of her motion. She argues that she is not a flight risk and  
10 she argues that there is a substantial likelihood she will prevail on appeal.

11 As set forth in the statute, Ms. Bland bears the burden of proving “by clear and convincing evidence  
12 that [she] is not likely to flee or pose a danger to the safety of any other person or the community” if released.  
13 She argues that she has previously complied with all of the Court’s pre-trial orders, has no criminal history,  
14 has been found disabled by the government, and has raised her son as a single mother. While it may be true  
15 that she complied with pre-trial orders while she still retained the presumption of innocence, that presumption  
16 is now gone and Ms. Bland has been convicted of two counts of defrauding the government by continuing to  
17 work after being found disabled thereby illegally obtaining Social Security disability benefits. Furthermore,  
18 she faces charges in the State of Washington for theft that had previously resulted in a deferred sentence. She  
19 also faces the real possibility of losing custody of her minor son due to this conviction. Ms. Bland’s  
20 motivations to remain in this jurisdiction and report when ordered to begin her sentence have therefore  
21 drastically changed. The Court finds that she has not met her burden to show that she is not a flight risk nor  
22 a danger to the community if released.

23 Ms. Bland next argues that there is a substantial likelihood that her case will be reversed on appeal, or  
24 that the appeal will result in a reduced sentence. She bases her argument on a recent United States Supreme  
25 Court decision, *Cunningham v. California*, \_\_\_\_\_ U.S. \_\_\_\_\_, 2007 WL 135687 (January 22, 2007), and upon  
26 evidence at trial that she claims was wrongly admitted.

27 A “substantial question” is one that is “fairly debatable.” *United States v. Handy*, 761 F.2d 1279, 1283  
28 (9<sup>th</sup> Cir. 1985). Ms. Bland has not shown that there is a “substantial question” that is “fairly debatable.” First,  
her argument that *Cunningham v. California* somehow changes the burdens of proof utilized in applying the  
Federal Sentencing Guidelines is mistaken. *Cunningham* merely held that California’s determinate sentencing  
scheme, unlike the now advisory Federal Sentencing Guidelines, violates the Sixth Amendment. This Court

1 correctly calculated the guidelines by including the amount of loss to establish an advisory guidelines range.  
2 See *United States v. Staten*, 450 F.3d 384 (9<sup>th</sup> Cir. 2006) (sentence enhancements are generally found by  
3 district court using a preponderance of the evidence standard). The Court then sentenced Ms. Bland after  
4 considering the factors set forth in 18 U.S.C. §3553(a), one of which are the guidelines.

5 Ms. Bland argues, without elaboration, that evidence against her was wrongly admitted. It is unclear  
6 what evidence to which she is referring. The government surmises that the evidence the defendant is most  
7 likely complaining about is the contents of a second appointment book. Testimony about this book was  
8 offered, and Ms. Bland thereafter moved for a mistrial. The Court denied the mistrial motion. Ms. Bland has  
9 not shown that the offering of this testimony has created reversible error. If Ms. Bland is referring to the  
10 certified statement of loss offered by the government at sentencing, the Court properly relied on such  
11 documentation in establishing the advisory guidelines range. Thus, she has failed to demonstrate that her  
12 appeal raises a substantial question - - one that is fairly debatable - - of law or fact that is likely to result in a  
13 reversal or a reduced sentence. Therefore, it is hereby

14 **ORDERED** that Defendant's Motion for Release Pending Appeal [Dkt. #83] is **DENIED**.

15 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing  
16 pro se.

17 Dated this 20<sup>th</sup> day of February, 2007.

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20 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE